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OFFICE OF PETITIONS
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ON PETITION

In re Application of:
BARTA, THOMAS E., *et al.*
Application No. 09/311,837
Filed: 05/14/1999
Attorney Docket No. MON-116.6

This is a decision on the January 10, 2001 petition under 37 C.F.R. §1.315.

RULES

§1.315 Delivery of patent.

The patent will be delivered or mailed upon issuance to the correspondence address of record. See § 1.33(a).

§1.316 Application abandoned for failure to pay issue fee.

If the issue fee is not paid within three months from the date of the notice of allowance, the application will be regarded as abandoned. Such an abandoned application will not be considered as pending before the Patent and Trademark Office.

§1.137 Revival of abandoned application, terminated reexamination proceeding, or lapsed patent.

- (b) Unintentional. If the delay in reply by applicant or patent owner was unintentional, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination proceeding terminated under §§ 1.550(d) or 1.957(b) or (c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:
- (1) The reply required to the outstanding Office action or notice, unless previously filed;
 - (2) The petition fee as set forth in § 1.17(m);
 - (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
 - (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section

ANALYSIS

Petitioner has filed this petition under 37 C.F.R. §1.315. This appears to be a mistake, since this patent has not been allowed and thus, 37 C.F.R. §1.315 is not yet applicable to this application. Since this application is abandoned, the Commissioner is presuming that

Petitioner intended to file this petition under 37 C.F.R. §1.316. However, that rule deals with abandonment failure to respond to a notice of allowance. Given that no such notice has been issued for this application, that rule is also inapplicable.

The text of the petition appears to be a request to revive the application due to unintentional delay. The appropriate rule to petition under for the revival of an unintentionally abandoned application is 37 C.F.R. §1.137(b). The Commissioner hopes that treatment of this petition under rule 1.137 will correctly address the intent of Petitioner.

ANALYSIS

This application became abandoned for failure to timely reply to the nonfinal office action mailed on June 14, 2000. A shortened statutory period of three months was set for replying. However, that period for reply lapsed without a timely or proper reply. Consequently, the application became abandoned on September 15, 2000.¹ A notice of abandonment was mailed on February 27, 2001.

CONCLUSION

The petition is **granted**. All requirements for filing a petition under 37 C.F.R. §1.137(b) have been met and the application is hereby revived.

This application is being revived solely for purposes of continuity with the Continued Prosecution Application (hereinafter "CPA") filed with this application and is again abandoned in favor of said CPA.

There is no indication that Petitioner herein was ever empowered to prosecute the instant application. If Petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney documentation must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

The statement of unintentional delay presented in the petition does not comply with the current rule. Effective December 1, 1997, 37 C.F.R. §1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional" be submitted. However, the statement presented will be accepted and construed as meaning that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional." If this is an incorrect interpretation in view of the rules, petitioner is required to provide a statement to that effect.

The request for a three month extension of time filed with this petition is moot since this reply would still have been outside of the period for reply even with the extension of time. Accordingly, if Petitioner would like a refund of the fee for such a request, such a refund may be obtained by making a written request to the Office of Finance. A copy of this decision should accompany any such request.

This file is being forwarded to Technology Center 1600 for processing of the CPA.

¹ 35 U.S.C. §133, 37 C.F.R. §1.134-136. It is noted that Petitioner filed a request for a three month extension of time with this petition. However, this request was received outside of the six month statutory period for reply. Therefore, this request is moot and is hereby refused.

Telephone inquiries concerning this matter may be directed to the undersigned in the Office of Petitions at (703) 306-5593.



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